

(2017) 02 AHC CK 0125
In the Allahabad High Court
Case No : Misc. Single No. 17721 of 2016

Atul

APPELLANT

Vs

State of U.P

RESPONDENT

Date of Decision : 14-02-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 3 ADJ 371 : (2017) 2 AllWC 1872

Hon'ble Judges : Devendra Kumar Upadhyaya, J.

Bench : Single Bench

Advocate : Rishabh Kapoor, Neel Kamal Mishra, Palash Yadav and Punit Kumar Yadav, Advocates, for the Petitioner; C.S.C. Brijesh Kumar Shukla, Rohit Tripathi and Savitra Vardhan Singh, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Devendra Kumar Upadhyaya, J.—The petitioner, who is an applicant for admission to LL.M. Course conducted by Lucknow University (hereinafter referred to as "University"), by instituting these proceedings under Article 226 of the Constitution of India, seeks to challenge the validity of the Ordinance for Admission to LL.M. Course in so far as it provides that 80% seats shall be filled up from amongst Lucknow University Law Graduates. In effect, the petitioner challenges the institutional reservation provided to Lucknow University Law Graduates in Admission to Post Graduate Courses in Law.

2. Heard Shri Rishabh Kapoor, learned counsel for the petitioner, Shri S.P. Singh, learned Senior Advocate, assisted by Shri Savitra Vardhan Singh, learned counsel appearing for University and Shri Rohit Tripathi, learned counsel for certain individuals, who are also applicants seeking admission to the said course, who have been permitted to intervene in the matter.

The basic premise of challenge to the impugned provision of the Ordinance permitting 80% institutional reservation is based on the law laid down by

Hon''ble Supreme Court in the case of Dr. Pradeep Jain and others v. Union of India and another, reported in [(1984) 3 SCC 654], which though permits institutional reservation, however, it clearly provides that institutional reservation may be permitted only to a reasonable extent i.e. up to 50% of the total seats.

3. Learned counsel for the petitioner in this regard has submitted that providing institutional reservation to the extent of 80% seats for admission in LL.M. Course is not only in derogation of the aforesaid law laid down by Hon''ble Supreme Court in the case of Dr. Pradeep Jain (supra) but also runs contrary to the another subsequent judgment of Hon''ble Supreme Court rendered in the case of Saurabh Chaudri and other v. Union of India and others, reported in [(2003) 11 SCC 146], which reiterates that in educational institutions, constitutional prescription of reservation upto 50% seats should be maintained and rest should be left for open competition based on merit.

4. The other submission made on behalf of the petitioner is that the institutional reservation provided by the University upto 80% of the seats in LL.M. Course does not meet the twin test of (i) reasonable classification based on some intelligible differentia and (ii) the justifiability on the basis of the nexus between the classification and the object sought to be achieved.

Per contra, Shri S.P. Singh, learned Senior Advocate appearing for the University and learned counsel representing the interveners have stated that institutional reservation in the matter of Admission to Postgraduate Courses is protected by the law laid down by Hon''ble Supreme Court in the case of Saurabh Chaudri (supra) and Dr. Pradeep Jain (supra) and there does exist a reasonable basis of classification in this case inasmuch as the institutional reservation to the extent of 80% seats has been provided for Lucknow University Law Graduates in order to secure the interest of the students passed out from the University and further that the National Law Universities and other Universities including private Universities have adopted grading system in their Universities and as such the students of these Universities are securing more marks (upto 90%) in LL.B. Examination, whereas the students of the University are generally securing 70-75% marks and hence, in absence of grading system in the University, students of the University are not in a position to get admission in other Universities. Based on the said ground, it has been submitted by the learned counsel representing the respondents that, thus, there exists reasonable classification in order to secure the career of students, who are passing LL.B. Course from the University.

5. Recognizing the principle that equality in law precludes discrimination of any kind, whereas equality in fact may require differential treatment in order to attain a result which establishes an equilibrium between two different situations, Hon''ble Supreme Court in the case of Dr. Pradeep Jain (supra) analysed the entire law on the said subject and further proceeded to note two considerations for justifying departure from the principle of selection based on merit. Hon''ble Supreme Court has stated in the said judgment that one such consideration is

called "State interest" and the other consideration is what may be described as "Region's Claim of Backwardness". Hon"ble Supreme Court on the review of the entire law on the issue ultimately concluded that so far as the admission in Postgraduate Courses is concerned, it would be eminently desirable not to provide for any reservation based on residence requirement within the State or on institutional preference, but having regard to broader considerations of equality of opportunity and institutional continuity in education, which has its own importance and value, directed that though residence requirement within the State shall not be a ground for reservation, a certain percentage of seats may be reserved on the basis of institutional preference in the sense that a student, who has passed M.B.B.S. Course from a Medical College or University may be given preference for admission to the Postgraduate Course in the same Medical College or University.

6. Having observed as above, Hon"ble Supreme Court, however, further provided that such reservation, on the basis of institutional preference, should not, in any event, exceed 50% of the total number of open seats available for admission to Postgraduate Course.

7. The law laid down by Hon"ble Supreme Court in the case of Dr. Pradeep Jain (supra) has been affirmed in the later judgment in the case of Saurabh Chaudri (supra) wherein it has been observed that reservation by institutional preference is not ultra vires Article 14 which forbids class discrimination but it does not forbid reasonable classification. It was further observed in the said case of Saurabh Chaudri (supra) that such classification must be based on reasonable and intelligible differentia and such differentia must be on some rational basis. It has further been observed by Hon"ble Supreme Court in the case of Saurabh Chaudri (supra) that having regard to the circumstances it would be proper that the scheme as framed in the case of Dr. Pradeep Jain (supra) should be reiterated and reservation by way of institutional preference, therefore, should be confined to 50 % of the seats since it is in public interest.

8. Noticing in the said judgment that ideal situation would be to see that only meritorious students, irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situation to show that India is not ready therefor. In para 39 of Saurabh Chaudri's case, the observations made by Hon"ble Supreme Court are as under:-

"39. The ideal situation, although it might have been to see that only meritorious students irrespective of caste, creed, sex, place of birth, domicile/residence are treated equally but history is replete with situations to show that India is not ready therefore. Sociological condition prevailing in India compelled the makers of the Constitution to bring in Articles 15 and 16 in the Constitution. The said Articles for all intent and purport are species of Article 14 which is the genies in a sense that they provide for exception to the equality clause also. Preference to a class of persons whether based on caste, creed, religion, place of birth, domicile or residence is embedded in-cur constitutional scheme. Whereas larger interest

of the country must be perceived, the law makers cannot shut their eyes to the local needs also. Such local needs must receive due consideration keeping in view the duties of the State contained in Articles 41 and 47 of the Constitution of India."

9. Hon"ble Supreme Court thereafter proceeded to consider the dictum of the case of Dr. Pradeep Jain (supra) and also considered the later judgment in the case of Dr. Dinesh Kumar v. Motilal Nehru Medical College ((1986) 3 SCC 727, (1987) 4 SCC 122, (1987) 4 SCC 459, 1989 Supp (2) SCC 428, (2003) 11 SCC 191(I), (2003)11 SCC 191(II), (2003) 11 SCC 191 (I) and (1990) 4 SCC 627] and concluded that reservation by way of institutional preference should be confined to 50% of the seats. Paras 70, 71 and 72 of the judgment of Hon"ble Supreme Court in the case of Saurabh Chaudri (supra) are quoted herein above;

"70.We, therefore, do not find any reason to depart from the ratio laid down by this Court in Dr. Pradeep Jain (supra). The logical corollary of our finding is that reservation by way of institutional preference must be held to be not offending Article 14 of the Constitution of India.

71. However, the test to uphold the validity of a statute on equality must be judged on the touch-stone of reasonableness. It was noticed in Dr. Pradeep Jain's case that reservation to the extent of 50% was held to be reasonable. Although subsequently, in Dr. Dinesh Kumar (II) case it was reduced to 25% of the total seats. The said percentage of reservation was fixed keeping in view the situation as then existing. The situation has now changed to a great extent. Twenty years have passed. The country has during this time produced a large number of Post Graduate doctors. Our Constitution is organic in nature. Being a living organ, it is ongoing and with the passage of time, law must change. Horizons of constitutional law arc expanding.

72. Having regard to the facts and circumstances of the case, we are of the opinion that the original scheme as framed in Dr. Pradeep Jain's case should be reiterated in preference to Dr. Dinesh Kumar (II) case. Reservation by way of institutional preference, therefore, should be confined to 50% of the seats since it is in public interest."

10. From the discussion made herein above, which is based on the aforesaid two judgments of Hon"ble Supreme Court, I have no doubt that though institutional preference, in the present case, would be permissible in the matter of admission to LL.M. Course to be made available to Lucknow University Law Graduates, however, its extent can be only upto 50% of the total number of seats.

The impugned Ordinance, thus, in my considered opinion, needs to be struck down.

11. Yet, there is another aspect of the matter which needs consideration and the said consideration is based on twin test applied by Courts to judge the validity of a classification. The classification under challenge may be justifiable only if it

meets the twin test of the classification being reasonable having some intelligible criteria and the reasonability of the nexus of such classification with the object sought to be achieved.

By the impugned Ordinance two classes of the applicants, who appeared for Admission to LL.M. Course run by the University as identifiable groups of candidates have been created; the one class of candidates are those who are Lucknow University Law Graduates and other class of applicants are those who are having their Bachelor's Degree in Law from other institutions/Universities. As to whether the classification is permissible and meets the test of Article 14 of the Constitution of India, can be determined on the basis of reasons given by the University in its counter affidavit.

12. The only reason given by the University for defending such classification can be found in para 5 of the supplementary counter affidavit filed by the University dated 23.08.2016 which reads as under:-

"5. That it is pertinent to mention here that the Lucknow University has adopted the criteria of reservation of 80% seats for Lucknow University students in order to secure the interest of the students passed out from Lucknow University. It is submitted that the National Law University and other Universities including private Universities have adopted grading system in their Universities and as such, the students of these Universities are securing above 90% score in LL.B. Course and on the other hand the students of Lucknow University are securing 70-75%. In the absence of grading system in Lucknow University, the students of Lucknow University are not in position to get admission in any other Universities. Therefore, it is a reasonable classification in order to secure the career of the students pursuing LL.B. Course from Lucknow University."

13. The aforequoted extract from the supplementary counter affidavit filed by the University gives an idea as to the reason which weighed in the mind of the authorities of the University while framing the impugned Ordinance. The reason given is that institutional reservation to the extent of 80% seats is being provided to secure the interest of students passing their Bachelor's Degree Course from the University. According to the University, National Law Universities and other institutions including private Universities have since adopted grading system for evaluating the examinations and such grading system has not been adopted by the University, it has resulted in the students studying in the other Universities securing above 90% marks in LL.B. Examination, whereas the students of University are securing 70-75% marks and hence, the institutional reservation.

14. The primary reason, thus, for introducing institutional reservation, that too, to the extent of 80% seats is the absence of grading system in Lucknow University, which according to the University, results in a situation where their students are not able to get admission in any other Universities. On the said ground, it has been stated that, therefore, there exists a reasonable classification

which secures the career of the students passing their LL.B. Course from the University.

The aforesaid reason being canvassed by University for protecting the Ordinance prescribing institutional reservation to the extent of 80% seats is clearly a self created reason as if absence of grading system to evaluate LL.B Examination is leading to their students securing less marks as compared to the marks being secured by the students of the other institutions/Universities, such a problem can easily be sailed over by the University by providing a normalization process of the marks which is a well known and recognised process of assessment of candidates in such a situation.

15. No reason, even for namesake, has come forth during course of arguments or even in the counter affidavit for providing institutional reservation up to the extent of 80%; neither any argument has been advanced by the respondents as to the reasons for departure from the law laid down by Hon"ble Supreme Court in the case of Dr. Pradeep Jain (supra) as affirmed in the case of Saurabh Chaudri (supra). The University has also not placed any statistical data to establish the ground taken for defending the impugned Ordinance. No study appears to have been conducted by University before framing the impugned Ordinance, neither any such material has been supplied with the counter affidavit to conclude as to how in absence of grading system to evaluate LL.B Examination is resulting in irreparable disadvantage to Lucknow University Law Graduates.

16. Resultantly, for the reasons aforesaid, the writ petition is allowed and the Ordinance for Admission to LL.M. Course of Lucknow University so far as it provides that 80% seats shall be filled up from amongst Lucknow University Law Graduates is hereby quashed.

17. Appropriate authority of the University is directed to re-frame the Ordinance for Admission to LL.M. Course in accordance with the provisions contained in U.P. State Universities Act, 1973, the First Statutes of the University and the observations made herein above in the preceding paragraphs of this judgment.

18. For the reasons which follow as under, fresh Ordinance to be framed by Lucknow University shall, however, be applicable for the next academic session i.e. academic session 2017-18.

The affidavit filed in support of the prayer for impleadment/intervention recites that the petitioner while challenging the admission procedure has not set forth his position in the merit and further that as per the merit list of the outside candidates, the petitioner is at serial no.25 in the over all merit and at serial no.5 amongst the candidates belonging to Other Backward Class. It has further been stated that there are several other O.B.C candidates above the petitioner in overall merit which would include in-house candidates as well and thus, if the matter is examined in this prospective, the petitioner does not have any standing in the merit list even if institutional reservation to the extent of 50% of the total seats is applied.

19. The writ petition was filed on 29.07.2016 and by the said date the first round of counselling was already under process and in the due course several candidates have also completed rest of the formalities for admission. This Court on 01.08.2016 passed an order that counselling for admission will go on but the same shall not be finalized and it is in compliance of the said order dated 01.08.2016 that though the counselling process is said to have been completed but the admissions have not been given.

20. Keeping in view the overall facts and circumstances of the case and also considering the fact that directing the University not to grant admission on the basis of admission process for the academic session 2016-17 would not be in the interest of students in general, it is directed that the new Ordinance, which may be framed under this judgment will be applicable from the next academic session, namely, academic session of 2017-18.

21. The admission process for the academic session 2016-17 shall be completed within a fortnight and after completion of teaching for the specified duration, examination of the students so admitted shall also be held. For completing the specified duration of teaching, the University authorities would request the teachers to hold the classes even on holidays.

There will be no order as to costs.